

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT S. BROOKS, JR.,

Plaintiff,

v.

No. 12-cv-1249 MV/SMV

**FARMINGTON MUN. SCH. and
JANEL RYAN,**

Defendants.

ORDER TAXING COSTS

THIS MATTER is before the Court on Defendants' Motion to Tax Costs [Doc. 126], filed on April 22, 2014. Plaintiff responded in opposition on April 29, 2014. [Doc. 127]. Defendants replied on May 16, 2014. [Doc. 132]. On May 8, 2014, the presiding judge referred the matter to the undersigned for disposition. [Doc. 128]. The Court finds that the costs requested by Defendants are reasonably necessary to the litigation. Accordingly, Defendants' Motion will be GRANTED, and costs of \$2,594.76 shall be taxed against Plaintiff.

Background

Plaintiff initiated this action on December 3, 2012, alleging that Defendants had improperly terminated his employment. *See* [Doc. 1]. In August of 2013, the parties filed cross motions for summary judgment. [Docs. 66, 69]. The parties argued over whether Defendants had been entitled to terminate Plaintiff's employment. *See* [Doc. 123] at 4. The Honorable Martha Vázquez, United States District Judge, granted summary judgment in favor of Defendants on March 28, 2014. [Doc. 123]. She found that Defendants had not "terminated" Plaintiff's employment within the meaning of the applicable statute. *Id.* at 4. Accordingly, she

did not reach the “issue presented by the parties.” *Id.* at 4–5. She entered judgment in Defendants’ favor on April 14, 2014. [Doc. 125]. Defendants filed the instant Motion to Tax Costs on April 22, 2014, requesting the costs of four depositions, totaling \$2,594.76. [Doc. 126].

Analysis

Deposition costs are taxable when they are “reasonably necessary to the litigation.” D.N.M.LR-Civ. 54.2(b)(1). A deposition is reasonably necessary to the litigation when “the deposition is used by the Court in ruling on a motion for summary judgment; or . . . the Court so determines.” D.N.M.LR-CIV. 54.2(b)(2)(B)–(C).

Here, Plaintiff makes one argument against the taxation of the costs of the four depositions. *See* [Doc. 127]. He argues that Judge Vázquez did not rely on the depositions when she ruled on the cross motions for summary judgment, and therefore, the costs of those depositions are not taxable under D.N.M.LR-Civ. 54.2(b)(2)(B). *Id.* at 3. Defendants do not dispute Plaintiff’s argument. *See* [Doc. 132]. Rather, Defendants argue that the Court is not limited to taxing the costs of depositions that are used in deciding a motion for summary judgment. *See id.* at 1. Defendants explain that *in addition* to taxing the costs of depositions used in ruling on a motion for summary judgment, the Court may also tax the costs of depositions when it “determines” that such depositions are “reasonably necessary to the litigation.” *Id.* (citing D.N.M.LR-Civ. 54.2(b)(2)(C)). They go on to argue that the four depositions were reasonably necessary to the litigation because they supported Defendants’ motion for summary judgment, and because they allowed Defendants to respond to Plaintiff’s motion for summary judgment. [Doc. 132] at 2. Defendants are correct.

In the briefing on the cross motions for summary judgment, Defendants cited to the four deposition transcripts for which they seek costs. *See* [Doc. 69, 82, 93]. Accordingly, the Court finds that the four depositions were reasonably necessary to the litigation. *See* D.N.M.LR-Civ. 54.2(b)(2)(C); *see also Lewis v. D.R. Horton, Inc.*, Nos. 09-2032 & 09-2137, 375 F. App'x 818, 828–29 (10th Cir. Mar. 24, 2010) (unpublished) (affirming district court's taxation of costs for depositions under D.N.M.LR-Civ. 54.2(b)(2) where the depositions were used by both sides in briefing the motion for summary judgment).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Tax Costs [Doc. 126] is **GRANTED**. Costs in the amount of **\$2,594.76** are taxed against Plaintiff in favor of Defendants.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge